

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

120257-

FILE: B-208014**DATE:** January 3, 1983**MATTER OF:** Rogers, Golden & Halpern**DIGEST:**

Protest that awardee cannot comply with its Buy American Certification and that agency improperly determined that the Buy American Act is not applicable to subject procurement of maps is dismissed as academic because even if the Buy American Act evaluation factor of 6 percent is added to the awardee's price, the relative standing of the offerors would not be affected.

Rogers, Golden & Halpern (RGH) protests the award of a contract to James Dobbin Associates Limited, a Canadian firm, for the preparation of graphic materials for use in an atlas of the Gulf of Mexico under request for proposals (RFP) No. SA-82-RSA-0016 issued by the Department of Commerce. RGH contends that the awardee cannot and will not comply with the requirements of the Buy American Act, 41 U.S.C. § 10a-d (1976).

The solicitation was issued on February 3, 1982, with an amended closing date of March 10. The solicitation called for a 1-year fixed-price contract under which the contractor was to use draft maps of the Gulf of Mexico in various scales provided by the agency to create finely-drawn maps of uniform scale suitable to be published by the agency in an atlas.

The agency's position is that the solicitation contemplated the award of a service contract and that the Act does not apply; the protester argues that the contract is one for maps and that an end product will be furnished by the contractor, so that the Buy American Act should apply. Further, RGH states that the inclusion of various clauses implementing the Act in the solicitation and the language of the Act and the implementing regulations indicate that this procurement is subject to the Act.

The Buy American Act provides in general that only such unmanufactured articles, materials and supplies as have been mined or produced in the United States and only such manufactured articles, materials and supplies which have been manufactured in the United States substantially from articles, materials or supplies mined, produced or manufactured in the United States shall be acquired for public use. 41 U.S.C. § 10(a). The Act does not prohibit the procurement of foreign end products or supplies, however, and under the implementing regulations, a preference for domestic items is established through the use of an evaluation differential (in most cases 6 percent of the price of the foreign item) which is added to the price of the foreign item. Concrete Technology, Inc., B-202407, October 27, 1981, 81-2 CPD 347; Executive Order No. 10582, December 17, 1954, as amended; Federal Procurement Regulations § 1-6.101 (1964 ed.).

We need not decide whether the Act applies here. Dobbins did not exclude any end products from the Buy American Certificate in its offer and did not indicate that it was offering anything other than domestic end products; thus, if the Certificate applies to Dobbins's performance, the acceptance of the offer resulted in an obligation on the part of Dobbins to furnish domestic end products. Compliance with such an obligation is a matter of contract administration which is the responsibility of the contracting agency and is not a matter for review by our Office. Law Enforcement Associates, Inc., B-205024, April 5, 1982, 82-1 CPD 304.

Moreover, again assuming that the Act applies to this procurement, we note that under the evaluation criteria for this procurement, technical factors and price were weighted equally, that Dobbins received a considerably higher (158) technical score than did the protester (118), and that even with the application of the 6 percent differential Dobbins's best and final offer of \$152,974 would have remained lower than the RGH final offer of \$175,315.

Under these circumstances, we view the Buy American Act issue as it pertains to the propriety of the award as academic. The protest therefore is dismissed.

Harry R. Van Cleve
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Acting General Counsel